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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MONIQUE WILLIAMS,

Plaintiff,

vs.

NATIONAL RAILROAD PASSENGER  
CORPORATION, ET AL.,

Defendants.

CASE NO. 19-cv-00576-YGR

**ORDER DENYING DEFENDANT'S MOTION  
TO DISMISS AND GRANTING IN PART AND  
DENYING IN PART PLAINTIFF'S MOTION  
THAT THE CLAIM FILED IS IN SUBSTANTIAL  
COMPLIANCE**

Re: Dkt. Nos. 27, 31

Plaintiff Monique Williams brings this tort action against the City of Richmond (the “City”) alleging negligence for dangerous condition of public property arising from a train collision. (Dkt. No. 1-1 (“Compl.”) ¶¶ 48-54.)<sup>1</sup> Specifically, plaintiff alleges the City negligently caused a train collision that struck the plaintiff on the train tracks by failing to warn pedestrians adequately of the dangerous conditions or take due care to prevent collisions in an area popular for pedestrian crossings, including by failure to post appropriate warnings via signage or erect barriers to limit pedestrian access. (*Id.* ¶¶ 13-30.) Defendant Amtrak removed the case to this Court on February 1, 2019. (Dkt. No. 1 (“Removal”)).

Now before the Court is the City’s motion to dismiss (Dkt. No. 31 (“Dismiss”)) and plaintiff’s related motion that the claim filed is in substantial compliance and petition for relief (Dkt. No. 27 (“Substantial Compliance”)). Having carefully considered the pleadings and the papers submitted, the Court **DENIES** the City’s motion to dismiss and **GRANTS** plaintiff’s motion

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<sup>1</sup> Plaintiff also brings suit against defendants National Railroad Passenger Corporation (“Amtrak”) and Union Pacific Railroad Company (“Union Pacific”) for negligence (Count I), negligence for dangerous condition of public property (Count II), negligent training (Count III), negligent entrustment (Count IV), and premises liability (Count V). (Compl. ¶¶ 1, 31-125). The instant motions do not implicate these claims against Amtrak and Union Pacific. Prior defendant County of Contra Costa has been dismissed without prejudice from the case pursuant to stipulation. (*See* Dkt. No. 22).

1 that claim filed is in substantial compliance.<sup>2</sup>

2 **I. BACKGROUND**

3 This action arises from a train accident that occurred on January 10, 2018 at  
4 “approximately 11:30 a.m.” (Compl. ¶ 13.) The accident occurred “at or near the location of MP  
5 13 of the Union Pacific Railroad Martinez Division, Richmond, California, 94801” and involved  
6 an accident with a train operated by Amtrak. (*Id.*) The collision occurred when “Amtrak Train  
7 535 collided with the Plaintiff while she was walking and crossing the railroad tracks to get to a  
8 store on the other side of the tracks.” (*Id.* ¶ 27.) Plaintiff claims “there is a fence surrounding [the  
9 train tracks] with a gate which is unsecured and is associated with a well worn path and thus can  
10 be opened and encourages residents living near [the train tracks] and pedestrians to open the gate

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11 <sup>2</sup> In connection with its motion to dismiss, the City request the Court take judicial notice  
12 of five documents. (Dkt. No. 32 (“RJN”).) Specifically, the City requests the Court take judicial  
13 notice of the claim documents filed by the plaintiff with the City, including plaintiff’s original  
14 claim filing, defendant’s notice of claim insufficiency, defendant’s notice of claim rejection,  
15 plaintiff’s application to file a late claim or in the alternative amend a claim, and defendant’s  
16 denial of that application. (*Id.*, Exs. A-E) The City reiterates this request in support of its  
17 opposition to plaintiff’s motion that the claim filed is in substantial compliance. (See Dkt. No. 35,  
18 Exs. A-E.) These documents were all filed with the City, which maintains those records, and  
19 plaintiff does not contest their validity. Accordingly, the Court **GRANTS** the City’s request for  
judicial notice. *See Lee v. City of Los Angeles*, 250 F.3d 668, 688-89 (9th Cir. 2001) (noting “a  
court may take judicial notice of matters of public record” and documents whose “authenticity . . .  
is not contested” and upon which a plaintiff’s complaint relies) (internal quotation marks omitted);  
*see also Gong v. City of Rosemead*, 226 Cal. App. 4th 363, 368 n.1 (2014) (noting “[t]he court  
may take judicial notice of the filing and contents of a government claim, but not the truth of the  
claim”).

20 In connection with her opposition to the City’s motion to dismiss and her motion that claim  
21 filed was in substantial compliance, plaintiff has included an incident report that is allegedly from  
22 Amtrak “which specifically notes the presence of Richmond Police and Richmond Fire  
23 Department including the associated investigation report number.” (Dkt. No. 37-1.) Plaintiff also  
24 filed a declaration attaching exhibits including an alleged copy of the Richmond Fire  
25 Department’s report of the incident (Dkt. No. 27-2, Ex. F), as well as a number of other exhibits  
26 were copies of documents of which the City seeks judicial notice or were already included in the  
27 complaint (See Dkt. 32, Ex. A-E; Dkt. 27-2, Exs. A, C-E). Plaintiff did not file any formal request  
28 for judicial notice of these documents. Defendant opposes the inclusion of extrinsic evidence in  
plaintiff’s opposition and other documents not originally included in the complaint. (Dkt. No. 40  
at 3.) Accordingly, the Court **DENIES IN PART** plaintiff’s implied request for judicial notice with  
respect to the Amtrak incident report (Dkt. No. 37-1) and the Richmond Fire Department Report  
(Dk. No. 27-2, Ex. F), and **GRANTS IN PART** the implied request with respect to the duplicative  
documents already contained in plaintiff’s complaint and the City’s request for judicial notice.

1 and cross the tracks to get to a store rather than walk around the property.” (*Id.* ¶ 28.)

2 Following the accident, plaintiff filed a claim with the City and engaged in correspondence  
3 with the City about this accident. The following facts are undisputed:

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- 5 On March 22, 2018, the City received plaintiff’s claim, which asserted that the accident  
6 occurred on January 10, 2018. (RJN, Ex. A.)
- 7 The City sent plaintiff a notice of insufficiency regarding the claim on March 28, 2018.  
8 (*Id.*, Ex. B.)
- 9 The City sent plaintiff a notice of rejection of the claim on May 9, 2018. (*Id.*, Ex. C.)
- 10 Plaintiff replied with a request for leave to present a late claim or amend and  
11 supplement her claim on September 14, 2018 that was received by defendant on  
12 September 17, 2018. (*Id.*, Ex. D.)
- 13 The City sent plaintiff a notice of rejection of this late claim application on October 1,  
14 2018. (*Id.*, Ex. E.)

15 On November 8, 2018, plaintiff filed this action against Amtrak, Union Pacific, and the  
16 City in the Superior Court of the State of California, Contra Costa County, captioned *Williams v.*  
17 *Nat'l R.R. Passenger Corp., et al*, Case No. C18-02144. (See Compl.) Plaintiff’s complaint  
18 asserts tort claims against defendants arising from a collision in which a train operated by Amtrak  
19 struck plaintiff causing physical injuries “at or near the location of MP 13 of the Union Pacific  
20 Railroad Martinez Division, Richmond, California, 94801” on January 10, 2018 at “approximately  
21 11:30 a.m.” (*Id.* ¶ 13.) Specifically, plaintiff asserts claims against the City for: (1) negligently  
22 operating, designing, maintaining, and/or repairing the train tracks, as well as the surrounding and  
23 adjacent property; (2) failing to warn the public of dangerous conditions where the accident took  
24 place, including failing to maintain proper signs and pedestrian markings designating the area as  
25 unsafe; (3) failing to erect barriers to prevent pedestrian access to the train tracks; and (4)  
26 negligently encouraging pedestrians to cross the tracks and in that area by placing a fence and  
27 gated area that allowed pedestrian access to the tracks in the area where the accident occurred.  
28 (*Id.* ¶¶ 14-17.)

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1 Plaintiff did not specify an amount of damages, but sought relief for general, non-  
2 economic damages including “physical, mental and emotional pain” and suffering; special,  
3 economic damages including medical expenses, professional expenses, loss of wages and earning  
4 capacity, and incidental expenses; costs of the suit; and statutorily permitted damages. (*Id.* at 20.)

5 Amtrak filed a notice of removal on February 1, 2019, asserting jurisdiction pursuant to 28  
6 U.S.C. § 1331 and that plaintiff’s complaint may be removed to this Court by Amtrak pursuant to  
7 28 U.S.C. § 1349. (Removal ¶ 3.)

8 On June 25, 2019, plaintiff filed a motion that the claim is in substantial compliance, citing  
9 her tort claim filed with the city on March 22, 2018, or in the alternative a petition for relief from  
10 the claim reporting requirements. (Substantial Compliance at 3-6.) On June 28, 2019, the City  
11 filed its motion to dismiss arguing that the plaintiff failed to comply with the claim presentation  
12 requirements of the California Tort Claims Act (“CTCA”), and that failure to comply with these  
13 requirements “subjects a plaintiff’s complaint to a motion to dismiss for failure to state a claim  
upon which relief can be granted.” (Dismiss at 8.)

14 **II. LEGAL STANDARD**

15 Pursuant to Federal Rule of Civil Procedure 12(b)(6), a complaint may be dismissed for  
16 failure to state a claim upon which relief may be granted. Dismissal for failure to state a claim  
17 under Rule 12(b)(6) is proper if there is a “lack of a cognizable legal theory or the absence of  
18 sufficient facts alleged under a cognizable legal theory.” *Conservation Force v. Salazar*, 646 F.3d  
19 1240, 1242 (9th Cir. 2011) (quoting *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th  
20 Cir. 1988)).

21 The complaint must plead “enough facts to state a claim [for] relief that is plausible on its  
22 face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is plausible on its face  
23 “when the plaintiff pleads factual content that allows the court to draw the reasonable inference  
24 that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678  
25 (2009). If the facts alleged do not support a reasonable inference of liability, stronger than a mere  
26 possibility, the claim must be dismissed. *Id.* at 678-79; *see also In re Gilead Scis. Sec. Litig.*, 536  
27 F.3d 1049, 1055 (9th Cir. 2008) (stating that a court is not required to accept as true “allegations  
that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences.”).

1       A complaint that falls short of the Rule 8(a) standard may be dismissed if it fails to state a  
2 claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). “Dismissal under Rule 12(b)(6)  
3 is appropriate only where the complaint lacks a cognizable legal theory or sufficient facts to  
4 support a cognizable legal theory.” *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097,  
5 1104 (9th Cir. 2008). For purposes of ruling on a Rule 12(b)(6) motion, the Court “accept[s]  
6 factual allegations in the complaint as true and construe[s] the pleadings in the light most  
7 favorable to a nonmoving party.” *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025,  
8 1031 (9th Cir. 2008). Mere “conclusory allegations of law and unwarranted inferences are  
9 insufficient to defeat a motion to dismiss.” *Adams v. Johnson*, 355 F.3d 1179, 1183 (9th Cir.  
10 2004). If a court dismisses a complaint, it should give leave to amend unless “the pleading could  
11 not possibly be cured by the allegation of other facts.” *Cook, Perkiss & Liehe, Inc. v. N. Cal.  
12 Collection Serv. Inc.*, 911 F.2d 242, 247 (9th Cir. 1990); *see also* Fed. R. Civ. P. 15(a). In making  
13 this determination, a court must bear in mind “the underlying purpose of Rule 15 to facilitate  
14 decisions on the merits, rather than on the pleadings or technicalities.” *Lopez v. Smith*, 203 F.3d  
15 1122, 1127 (9th Cir. 2000) (en banc) (alterations and internal quotation marks omitted).

### 16       **III. ANALYSIS**

17       The CTCA “requires a plaintiff to file a written claim stating the date, place, and other  
18 circumstances of the occurrence or transaction which gave rise to the claim asserted . . . within six  
19 months of the accrual of the cause of action.” *Mackovski v. City of Garden Grove*, 666 F. App’x.  
20 649, 654 (9th Cir. 2016) (internal citations and quotations omitted); *see also* Cal. Gov’t Code §§  
21 910, 911.2. The purpose of these claim presentation requirements “is to provide the public entity  
22 sufficient information to enable it to adequately investigate claims and to settle them, if  
23 appropriate, without the expense of litigation.” *Mackovski*, 666 F. App’x. at 654.

24       Under the CTCA, a complaint may be subject to dismissal if the plaintiff fails to file with  
25 the public entity a timely claim that substantially complies with the claim presentation  
26 requirements. “Timely claim presentation is not merely a procedural requirement, but is a  
27 condition precedent to plaintiff’s maintaining an action against defendant . . . and thus an element  
28 of the plaintiff’s cause of action.” *Shirk v. Vista Unified School Dist.*, 42 Cal.4th 201, 209 (2007)  
(superseded by statute on other grounds).

1        The parties do not dispute that plaintiff filed a claim with the City within the required six-  
2        month accrual period. Instead, the instant motions raise two issues: (A) whether the claim filed on  
3        March 22, 2018 complied with the claim presentation requirements; and (B) whether the claim  
4        fairly reflects the factual allegations in the complaint.

5        **A. Compliance with Claim Presentation Requirements**

6        An individual filing a claim under the CTCA must include the following:

- 7                (a) The name and post office address of the claimant.
- 8                (b) The post office address to which the person presenting the claim desires  
notices to be sent.
- 9                (c) The date, place and other circumstances of the occurrence or transaction  
which gave rise to the claim asserted.
- 10               (d) A general description of the indebtedness, obligation, injury, damage or  
loss incurred so far as it may be known at the time of presentation of the  
claim.
- 11               (e) The name or names of the public employee or employees causing the  
injury, damage, or loss, if known.
- 12               (f) The amount claimed if it totals less than ten thousand dollars (\$10,000) as  
of the date of presentation of the claim, including the estimated amount of any  
prospective injury, damage, or loss, insofar as it may be known at the time of  
the presentation of the claim, together with the basis of computation of the  
amount claimed. If the amount claimed exceeds ten thousand dollars  
(\$10,000), no dollar amount shall be included in the claim. However, it shall  
indicate whether the claim would be a limited civil case.

17        Cal. Gov't Code § 910.

18        Plaintiff's claim timely filed on March 22, 2018 meets the requirements of subsections (a),  
19        (b), (d), and (f) on its face. (*See* RJN, Ex. A.) The claim identifies the name and mailing address  
20        of the plaintiff, where mail should be sent, the date of the accident, that the injuries are physical  
due to the train accident, and that the claim is for damages in excess of \$10,000 (an unlimited civil  
22        case). (*Id.*) The parties do not dispute the satisfaction of subsection (e), as it is unlikely plaintiff  
could have known or reasonably discovered at the time of claim filing the identities at the of the  
24        City employees responsible for the area where the accident occurred. Therefore, the only disputed  
factor is (c): the location of the accident and the circumstances, actions, or omissions of  
26        defendant's employees that give rise to the claim.

27        While plaintiff's claim does not reflect an abundance of specific location information, the  
28        claim does meet the requirements of Section 910 under a substantial compliance analysis. *See*

1        *Cabrera v. Alvarez*, 977 F. Supp. 2d 969, 980 (N.D. Cal. 2013) (finding that a claim alleging  
2        housing and discrimination claims was substantially compliant after “construing all factual  
3        inferences in favor of the nonmoving party”).

4        “[A] claim under Government Code section 910 is sufficient if (1) there is ‘some  
5        compliance with all of the statutory requirements’; and (2) the claim discloses sufficient  
6        information to enable the public entity adequately to investigate the merits of the claim so as to  
7        settle the claim, if appropriate.” *County of Los Angeles v. Superior Court*, 159 Cal. App. 4th 353,  
8        360 (2008) (citing *City of San Jose v. Superior Court*, 12 Cal.3d 447, 456-57 (1974)). Further, “it  
9        is not the purpose of the claims statutes to prevent surprise. Rather, the purpose of these statutes is  
10        to provide the public entity sufficient information to enable it to adequately investigate claims and  
11        to settle them, if appropriate, without the expense of litigation.” *City of San Jose*, 12 Cal.3d at  
12        455. The court in *City of San Jose* considered two types of compliance: “some compliance” cases  
13        where there is “compliance with all the required elements—but compliance has been Defective”  
14        and cases where “claims were successfully challenged for failure to comply entirely with a  
15        particular statutory requirement.” *Id.* at 456. Thus, to “gauge the sufficiency of a particular claim,  
16        Two tests shall be applied: Is there Some compliance with All of the statutory requirements; and,  
17        if so, is this compliance sufficient to constitute Substantial compliance?” *Id.* (capitalization in  
18        original).

19        Although the parties dispute the sufficiency of plaintiff’s information regarding subsection  
20        (c) requirements, it is clear on the face of the claim that plaintiff provided the following  
21        information: her identity and contact information; the date, location and circumstances of the  
22        accident giving rise to the claim;<sup>3</sup> a description of the injury suffered; notice to the City of the  
23        claim; and a basic estimate of monetary damages. Accordingly, plaintiff’s claim addresses each  
24        section of the relevant CTCA provisions and satisfies the “some compliance” test. *See City of San*  
25        *Jose*, 12 Cal.3d at 456.

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27        <sup>3</sup> The City does not claim that plaintiff provided no information about the location, only  
28        that “the claim provided no information indicating the accident occurred in the City.” (Dismiss at  
11.) Even though the City argues this information is unintelligible, it does not argue plaintiff  
failed to provide any information about the location of the accident.

1 Plaintiff's complaint does not include nearby cross streets, geographic coordinates, or  
2 otherwise any information that would make it immediately clear to the reader the precise location  
3 of the accident. However, substantial compliance does not require plaintiff to provide this level of  
4 detail, only "to provide the public entity sufficient information to enable it to adequately  
5 investigate claims." *See id.* at 455. Under this standard, reading plaintiff's claim in the light most  
6 favorable to her, she has provided the City with the following information about the nature of the  
7 accident: the specific date and time when it occurred; that the accident occurred on train tracks  
8 along the Martinez line; that it involved an Amtrak train; the hospital that treated the injuries; and  
9 that the City maintained or otherwise controlled the property where the accident took place  
suggesting it occurred within Richmond's city limits. (*See* RJN, Ex. A).

10 The City argues that the location of the injury is unintelligible in the claim, identifying the  
11 location of only "13 UP Martinez." (Dismiss at 10-11.) Defendant also argues that the actions or  
12 omission the City took were "only vaguely stated" as the claim stated the City "allowed or created  
13 conditions that led to the subject accident taking place" depriving the City an opportunity to  
14 investigate the claim. (Dismiss at 10.) The fact that the claim contains a potential mistake  
15 (miswriting "13 UP Martinez" instead of "13 MP Martinez" referring to mile post 13) does not  
16 mean the claim fails the sufficiency test. *See City of San Jose*, 12 Cal.3d at 456; *see also Rowan v.*  
17 *City etc. of San Francisco*, 244 Cal. App. 2d 308 (1966) (denying a motion to dismiss despite the  
18 claim describing the place of accident as "3350 Scott St." instead of "3358-3360 Scott St.");  
19 *Johnson v. City of Oakland*, 188 Cal. App. 2d 181 (1961) (denying a motion to dismiss despite the  
20 claim indicating accident occurred in front of 1819 35th Avenue instead of 1819 34th Avenue);  
21 *Johnson v. City of Los Angeles*, 134 Cal. App. 2d 600 (1955) (denying a motion to dismiss despite  
22 the claim indicating accident occurred on southeast corner instead of southwest corner of an  
23 intersection). While plaintiff's claim lacks some detail about the location of the accident,  
24 understanding that "13 UP Martinez" likely means "13 MP Martinez" is a reasonable inference  
25 given the presence of mile markers and a lack of specific street addresses on train tracks.  
26 Additionally, trains striking pedestrians is not a frequent occurrence for one city, so the fact that  
27 plaintiff included the specific date and time of the accident, as well as the fact that the incident  
involved an Amtrak train, equips the City with enough information to investigate the claim.

1            Taken together this information is sufficient to allow a City investigator to adequately  
2 address plaintiff's claim. Accordingly, plaintiff meets the standard for substantial compliance,  
3 especially in light of the public policy of broadly reading what constitutes substantial compliance  
4 and providing the opportunity for the issue to be decided on the merits rather than on the  
5 pleadings. Claim presentation requirements "should not be applied rigidly or to snare the unwary.  
6 Rather, to gauge the sufficiency of a particular claim, the court looks at: (1) whether there is some  
7 compliance with all of the statutory requirements; and (2) if so, whether such compliance is  
8 sufficient to constitute substantial compliance." *See Bi-Meat & Provisions Co. v. City of*  
9 *Hawaiian Redevelopment Agency*, 156 Cal. App. 4th 1419, 1427-28 (2007) (internal citations and  
10 quotations omitted). Plaintiff has provided information consistent with every provision required  
11 under the CTCA and has provided sufficient information to constitute substantial compliance.<sup>4</sup>

12            **B. Variation Between the Claim and the Complaint**

13            The City argues that plaintiff's complaint fatally departs from her claim by changing the  
14 location of the accident and by specifying the actions the City took or failed to take. (Dismiss at  
15 14.) The City further argues that "the tort claim was completely devoid of any factual allegations  
16 demonstrating that it was a dangerous condition of the City's property that was the basis for  
17 Plaintiff's claim." (*Id.*) To support these arguments, the City asserts the "variance between the  
18 tort claim and [plaintiff's complaint] is vastly greater than in those cases where California courts  
have previously found a variance to be fatal to the complaint." (*Id.* at 15.)

19            "If the claim is rejected and the plaintiff ultimately files a complaint against the public  
20 entity, the facts underlying each cause of action in the complaint must have been fairly reflected in  
21 a timely claim. Even if the claim were timely, the complaint is vulnerable to a demurrer if it  
22 alleges a factual basis for recovery which is not fairly reflected in the written claim." *Stocket v.*  
23 *Ass'n of Cal. Water Agencies Joint Powers Ins. Auth.*, 34 Cal.4th 441, 447 (2004) (internal  
24 quotations, citations, and alterations omitted); *see also Gong*, 226 Cal. App. 4th at 376.

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27            <sup>4</sup> Because the Court finds that plaintiff's claim is in substantial compliance, the Court need  
28 not address plaintiff's argument, in the alternative, that in the event that her claim does not  
substantially comply, she should be allowed to amend her claim or otherwise proceed without the  
claim procedure.

1        “The claim, however, need not specify each particular act or omission later proven to have  
2        caused the injury. A complaint’s fuller exposition of the factual basis beyond that given in the  
3        claim is not fatal, so long as the complaint is not based on an entirely different set of facts. Only  
4        where there has been a complete shift in allegations, usually involving an effort to premise civil  
5        liability on acts or omissions committed at different times or by different persons than those  
6        described in the claim, have courts generally found the complaint barred. Where the complaint  
7        merely elaborates or adds further detail to a claim, but is predicated on the same fundamental  
8        actions or failures to act by the defendants, courts have generally found the claim fairly reflects the  
9        facts pled in the complaint.” *Stockett*, 43 Cal.4th at 447 (internal citations and quotations  
10       omitted).

11       In *Stockett*, the California Supreme Court found a plaintiff properly presented a wrongful  
12       termination cause of action following plaintiff’s claim because the claim provided “sufficient  
13       information for the public entity to conduct an investigation into the merits of the wrongful  
14       termination claim, and the complaint’s free speech and conflict of interest theories of termination  
15       in violation of public policy were fairly reflected in the claim because the complaint did not  
16       change the fundamental facts of the claim.” *Id.* at 450. Just as in *Stockett*, here plaintiff’s  
17       complaint is based on the same factual allegations and allegedly liability, adding further detail to  
18       the initial allegations that the defendant created conditions that led to the train accident and adding  
19       greater specificity to the claim that pedestrian access to the railroad tracks was the specific  
20       dangerous condition. (See RJD, Ex. A.) Thus, the plaintiff’s “claim and complaint [are] based on  
21       the same foundation.” *See Stockett*, 34 Cal.4th at 448 (citing *Blair v. Superior Court*, 218 Cal.  
22       App. 221 (1990) (finding that where the claim and complaint were based on the same foundation  
23       “because of [the highway’s] negligent construction or maintenance, the highway at the scene of  
24       the accident constituted a dangerous condition of public property”)).

25       Plaintiff’s original claim is vague but does state the City “allowed or created conditions  
26       that led to the subject accident taking place. Specifically, pedestrians and others had access to the  
27       railroad tracks and area where the subject accident occurred.” (RJD, Ex. A.) The allegations in  
28       plaintiff’s claim fairly reflect the issues raised in the complaint and any differences are not fatally  
variant as they do not “shift liability to other parties or premise liability on acts committed at

1 different times or places.” *See Stockett*, 34 Cal.4th at 448. Defendant’s argument that the  
2 complaint’s language fatally varied by specifying allegations of negligent property maintenance or  
3 design, failure to install adequate warnings, and that City employees created or knew about the  
4 dangerous conditions does not show a shift in party or premise liability. Instead the specificity in  
5 the complaint flows from the same basic foundation of plaintiff’s claim: the City created the  
6 conditions that caused the accident by failing to prevent or warn against pedestrian access to the  
7 train tracks.

8 **IV. CONCLUSION**

9 For the foregoing reasons, the Court **GRANTS IN PART** and **DENIES IN PART** defendants’  
10 motion, as indicated below.

11 1. The Court **DENIES** defendant’s motion to dismiss as it relates to plaintiff’s claims  
12 against defendant City of Richmond; and  
13 2. The Court **GRANTS** plaintiff’s motion that the claim filed pursuant to California  
14 Government Code Section 910 is in substantial compliance.

15 This Order terminates Docket Numbers 27 and 31.

16 **IT IS SO ORDERED.**

17 Dated: October 1, 2019

  
18 **YVONNE GONZALEZ ROGERS**  
19 **UNITED STATES DISTRICT COURT JUDGE**

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